

**WATER RESOURCES PROTOCOL
BETWEEN
THE PUYALLUP TRIBE OF INDIANS
AND THE
WASHINGTON STATE DEPARTMENT OF ECOLOGY**

Parties

1. The parties to this intergovernmental Protocol are the Puyallup Tribe of Indians ("Tribe") and the Washington State Department of Ecology ("Ecology"). The Tribe and Ecology are parties to the 1988 Puyallup Settlement Agreement.

Purpose

2. This Protocol is intended to establish implementation procedures for consultation between the Puyallup Tribe of Indians and the Washington Department of Ecology in order to provide consistent and cooperative treatment of proposed governmental actions that affect water resources in the Puyallup/Carbon/White River Basins ("Basins"). Because the parties need to establish consultation procedures on an expedited basis, this Protocol may be replaced or amended as needed.
3. Specifically, this Protocol is intended to improve consultation on requests to one party for authorization to divert, store, discharge, or otherwise utilize water in the Basins when those proposals have the potential to affect the governmental interests of the other party. Such governmental interests include water quality protection, water quantity protection, fisheries protection, and effective governance of shared resources.
4. After signature, this Protocol will be appended to The 1997 Intergovernmental Agreement among the Puyallup Tribe of Indians, the Washington State Department of Ecology, and the United States Environmental Protection Agency.

Authority

5. The 1989 Centennial Accord between the federally recognized Indian Tribes in Washington State and the State of Washington commits the parties to a government-to-government approach in dealing with issues of mutual concern. The Accord provides that "each agency ... may establish more detailed implementation procedures in subsequent agreements between tribes and the particular agency." The Accord, therefore, contemplates this type of Protocol.

6. The 1988 Puyallup Land Claims Settlement Agreement (“Agreement”), adopted as federal law in Public Law No. 101-41, commits the Tribe and State, when carrying out delegated federal programs, “to involve each other in a consultative manner and to work cooperatively where practicable” and “to enter into discussions which will result in a complementary approach to environmental issues, with the overall objective of consistent or compatible environmental controls in the areas under respective State and Tribal jurisdictions.” The Agreement further provides “for those areas where there are no federal programs, the State and the Tribe agree to consult in such a manner as to provide consistent and cooperative environmental programs.”
7. The 1997 Intergovernmental Agreement among the Puyallup Tribe of Indians, the Washington State Department of Ecology, and the United States Environmental Protection Agency sets out the parties’ agreement “in good faith to coordinate and cooperate with regard to all activities under the respective laws of the Parties relating to environmental regulation and management within the Puyallup Reservation and within the Puyallup Tribe’s adjudicated Usual and Accustomed Fishing Places under *U.S. v. Washington*.” It contemplates the use of formal and informal protocols. The 1998 Agreement on the Allocation of the Puyallup River TMDL Reserve Capacity of Biochemical Oxygen Demand (BOD 5) and Ammonia affirms the parties’ intentions to coordinate water quality efforts and work cooperatively on water quality issues in the Basin.

Applicability

8. This Protocol applies to all decision making processes in Ecology’s Southwest Region, including the issuance, denial, or conditioning of permits, licenses, certifications, or other authorizations that may affect water quantity, water quality, fisheries, or other water resources in the Basins. Water quantity includes, but is not limited to, surface and ground water flow regimes and levels throughout the Basins. Water quality includes physical, chemical and biological water quality standards and other criteria for protection of ecosystem functions, drinking water supplies, and ceremonial uses. Generally, these decision making processes include, but are not necessarily limited to shoreline conditional use and variance permits, Section 401 and Coastal Zone Management Certifications, Shoreline Master Programs, Flood Hazard Reduction Plans, NPDES permits, and water rights.

Procedure

9. The parties commit to the following three key communication goals: giving early notification, providing adequate information, and engaging in timely consultation. These goals may be achieved in different ways depending on the decision to be made and the laws and authorities of the respective governments.
10. As soon as practicable, each party will send written notice to the other and inquire whether the other party wishes to engage in consultation in any decision making process to which this protocol applies. The notice will provide sufficient information for the other party to determine if they may wish to comment or consult on the project. Depending on the type of permit or decision, notice may include providing the other party with a list of new and pending applications, other proposals for decision making, or providing applications or other initiating documents. When a pre-application is part of the decision-making process, notification should occur as soon as practicable and prior to requesting additional information or accepting any request for authorization or initiating any other decision making process. Any notice required under this Protocol will occur sufficiently prior to any decision-making process to allow the other party meaningful participation.
11. The natural resources director of the Tribe or his or her designee and the regional director of Ecology or his or her designee may jointly agree to detailed program-specific notification and consultation procedures consistent with this agreement for specific types of permit decisions or other actions.
12. An affirmative response in writing will initiate consultation on the affected decision making process. Consultation may include:
 - a. Defining proposals with sufficient particularity to allow full issue analysis.
 - b. Listing the water quality parameters, habitat functions, and other interests that may be affected by the proposal.
 - c. Drafting additional information requests to third parties as needed.
 - d. Carrying out full scoping of technical, policy and legal issues.
 - e. Designing and implementing scientific studies where insufficient data is available.
 - f. Follow-up studies and compliance monitoring.
 - g. Providing for enforcement alternatives.
 - h. Taking other measures necessary to ensure that each party has all the information needed for informed decision making.

13. When consultation is initiated, the parties will coordinate communications with third parties to ensure the accurate and efficient flow of information. Meetings, telephone conferences, and written communications and other contacts will be managed to enable participation by both governmental parties.
14. Prior to engaging in any decision making process to which this Protocol applies, the parties will, where feasible, list and seek agreement on the specific water quality standards, habitat requirements, and other criteria that will be applied during the decision making process. To accomplish this, the parties may set up technical workgroups tasked with identifying and defining generic and site-specific criteria.
15. The dispute resolution procedures under Section VI, Decision Making and Dispute Resolution, of the 1997 Intergovernmental Agreement among the Puyallup Tribe of Indians, the Washington State Department of Ecology, and the United States Environmental Protection Agency will be used in resolving disputes arising under this Protocol.

Construction and Termination

16. This Protocol shall be applied to complement, not replace, existing procedures. If any provision of this Protocol is determined to be in conflict with existing laws, regulations, or rights, every attempt will be made to resolve that conflict. In the event that such resolution is not possible, existing law will be applied and the parties will make every effort to apply the remaining provisions.
17. Nothing in this Protocol shall be construed to create any right, benefit, or responsibility, substantive or procedural, enforceable by any person or entity other than the parties to this Protocol. This Protocol shall not be construed to create a separate right of judicial review, *provided that* this clause shall not limit any other existing or future right to judicial review available under federal, state, or tribal law.

18. This Protocol may be terminated by either party without cause upon 30 days written notice.
19. This agreement will be effective from January 1, 2001.

Herman Dillon, Sr.
Chairman
Puyallup Tribe of Indians

Tom Fitzsimmons
Director
Department of Ecology